

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15770
[Redacted],)	
)	DECISION
Petitioners.)	
)	
)	

On June 14, 2001, the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (petitioners). The Notice of Deficiency Determination was in the amount of \$5,025 (tax, penalty and interest) concerning tax years 1994 through 1996.

On August 1, 2001, the petitioners filed a letter of protest that the Commission treated as a petition for redetermination. The petitioners elected not to participate in an informal conference and instead resubmitted their written protest of August 1, 2001. Therefore, this decision is based on the information contained in the Commission's file. The Commission has reviewed the file, is advised of its contents, and now issues this decision.

This is a nonfiler case. The petitioners did not file Idaho individual income returns for the tax years in question. The Commission's Tax Enforcement Specialist (specialist) contacted the petitioners and advised the petitioners that it appeared they were required to file Idaho income tax returns. The specialist sent the petitioners information explaining Idaho's income tax filing requirements and asked the petitioners to direct any returns to his attention.

The petitioners reviewed the information the specialist provided but declined to file any tax returns. The Enforcement Specialist subsequently prepared provisional returns for the petitioners. To determine the petitioners' gross income, the specialist relied upon the wage information the petitioners' employers reported on Form W-2, as well as other information

reported on Form 1099. The specialist also provided the petitioners with personal deductions and exemptions and a grocery credit. Once completed, the provisional returns showed the petitioners owed \$ 5,025 of tax, penalty and interest for the tax years 1994 through 1996. As indicated above, the specialist issued a Notice of Deficiency Determination in that amount.

In the protest filed with the Commission, the petitioners assert they are not required to file income tax returns or pay Idaho income tax because: (1) they are sovereigns rather than Idaho residents, and therefore, they are not subject to the tax laws of Idaho; (2) federal and state taxes are based solely on “voluntary compliance”; (3) filing a return would violate their 5th Amendment rights; (4) the Idaho income tax is not constitutional because the 16th Amendment to the United States Constitution was not properly ratified; (5) wages are compensation for their labor rather than “income,” and, since wages are not income, they are not subject to tax; (6) the Federal Reserve Bank was created in violation of the United States Constitution, therefore, federal reserve notes are neither legal tender nor “income” subject to tax; and (7) the Tax Commission lacked the authority to issue a Notice of Deficiency Determination.

The courts have addressed and rejected these common tax protestor arguments. Idaho law clearly sets forth the petitioners’ obligation to file tax returns and pay the amount of tax correctly shown as due on those returns. Idaho law also specifically authorizes the Commission to issue a Notice of Deficiency Determination when a person fails to satisfy his or her state tax obligations.

The Idaho income tax filing requirements are set out in Idaho Code § 63-3030. Any resident who, during the taxable year, has a gross income in excess of the stated threshold amount must file a return.

The record before the Tax Commission demonstrates the petitioners were Idaho residents during the year in question. The term “resident” is defined in Idaho Code § 63-3013 as any

individual who has resided in the state of Idaho for the entire taxable year or who is domiciled in this state. The petitioners do not dispute they lived (were domiciled) in [Redacted], Idaho, during the tax years in question.

Instead, the petitioners maintain they are individual “sovereigns.” The petitioners assert that as sovereigns they are separate entities, apart from the state of Idaho and beyond the state’s taxing jurisdiction.

The courts have consistently rejected claims of “sovereignty” that attempt to circumvent a person’s residency status and avoid federal or state income tax. United States v. Hanson, 2 F.3d 942, 945 (9th Cir. 1993); Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990); United States v. Dawes, 874 F.2d 746, 750-751 (10th Cir. 1989); United States v. Studley, 783 F.2d 934, 937 & n.3 (9th Cir. 1986); Minovich v. Commissioner of Internal Revenue, 1994 T.C. Memo. 89. Domicile itself affords a basis for a state’s individual income tax. People of State of New York ex rel. Cohn v. Graves, 300 U.S. 308, 312-13 (1937). "That the receipt of income by a resident of the territory of a taxing sovereignty is a taxable event is universally recognized. . . . Enjoyment of the privileges of residence in the state and the attendant right to invoke the protection of its laws are inseparable from responsibility for sharing the costs of government."

The obligation to file returns and pay income tax is not completely voluntary. While both the federal and Idaho tax laws are based on honest and forthright self-reporting, this does not support the argument that these laws are optional. Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990); Wilcox v. Commissioner, 848 F.2d 1007, 1008 (9th Cir. 1988); United States v. Witvoet, 767 F.2d 338, 339 (7th Cir. 1985).

With respect to the taxpayer’s claim of 5th Amendment immunity, it is true that the 5th Amendment of the United States Constitution protects an individual from compelled

self-incrimination. It is well settled, however, that a blanket claim of 5th Amendment immunity is insufficient to avoid the legal requirement to file an income tax return. Garner v. United States, 424 U.S. 648, 651 (1976); California v. Byers, 402 U.S. 424, 430 (1971); United States v. Campbell, 619 F.2d 765, 769 (8th Cir. 1980); United States v. Stout, 601 F.2d 325, 332 (7th Cir. 1979); United States v. Edelson, 604 F.2d 232, 235 (3rd Cir. 1979); United States v. Johnson, 577 F.2d 1304, 1311 (5th Cir. 1978); Idaho State Tax Commission v. Peterson, 107 Idaho 260, 262 (1984). Absent some factual basis to show that the petitioners are faced with a real and substantial danger of self-incrimination, they remain legally obligated to fill out and file their Idaho returns. See, e.g., Marchetti v. United States, 390 U.S. 39, 53 (1968). “The central standard for the privilege’s application has been whether the claimant is confronted by substantial and ‘real,’ and not merely trifling or imaginary, hazards of incrimination.”

The courts also addressed and rejected the argument that individuals are not required to file returns or pay income tax on the ground that the 16th Amendment was not properly ratified. Miller v. United States, 868 F.2d 236 (7th Cir. 1988); Prescott v. Commissioner, 561 F.2d 1287 (8th Cir. 1977); Rowlee v. Commissioner, 80 T.C. 1111 (1983); and Mendonca v. Oregon Department of Revenue, 11 Or. Tax 236 (Or. T.C. 1989).

The record before the Commission also demonstrates the petitioners received income in excess of the statutory amount that triggers a person’s filing requirement. Idaho Code § 63-3030 provides that every resident individual having gross income, as defined by section 61(a) of the Internal Revenue Code, exceeding a specified dollar amount is required to file an Idaho individual income tax return. The petitioners’ wage and income information reported on Forms W-2 and 1099 shows the petitioners received gross income in excess of the threshold amount.

The petitioners' argument that their wages are compensation for labor rather than "income" is without merit. The courts have consistently held that a person's compensation for labor or wages is income for income tax purposes. Coleman v. Commissioner, 791 F.2d 68, 70 (7th Cir.1986); United States v. Lawson, 670 F.2d 923 (10th Cir. 1982); United States v. Buras, 633 F.2d 1356 (9th Cir. 1980); Mitchell v. Agents of State, 105 Idaho 419, 425 (1983); State v. Staples, 112 Idaho 105, 107 (Ct. App. 1986); Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 575 (Ct. App. 1986).

The courts also rejected the argument that payments received in the form of Federal Reserve notes are not legal tender or "income" subject to tax. United States v. Condo, 741 F.2d 238, 239 (9th Cir. 1984); Jones v. Commissioner, 688 F.2d 17 (6th Cir. 1982); United States v. Rickman, 638 F.2d 182, 184 (10th Cir. 1980); United States v. Rifan, 577 F.2d 1111, 1112, (8th Cir. 1978); United States v. Daly, 481 F.2d 28, 30 (8th Cir.), *cert. denied* 414 U.S. 1064 (1973).

Persons who are required to file an Idaho individual income tax return must pay Idaho income tax on their taxable income at the rate set forth in Idaho Code § 63-3024. In the event a person fails to file a tax return or to pay the proper amount of individual income tax, Idaho law specifically provides the Commission with the authority to issue a Notice of Deficiency.

63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST. (1)(a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery

The Enforcement Specialist found a deficiency existed based on the income reported on Forms W-2 and 1099. Because the petitioners were domiciled in Idaho and were Idaho residents, the Enforcement Specialist correctly determined the petitioners' wages and other income were subject to Idaho individual income tax and issued a Notice of Deficiency Determination.

It is well settled in Idaho that a Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the petitioner to show that the tax deficiency is erroneous. Id. Since the petitioners have failed to meet the burden in this case, the Tax Commission finds that the amount shown due on the Notice of Deficiency Determination is true and correct.

WHEREFORE, the Notice of Deficiency Determination dated June 14, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1994	\$ 616	\$154	\$337	\$1,107
1995	853	213	395	1,461
1996	1,570	393	598	<u>2,561</u>
TOTAL				<u>\$5,129</u>

Interest is calculated through January 31, 2002, and thereafter will continue to accrue at the rate of \$0.58 per day until paid.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioners' right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2002.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2002, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted] Receipt No. [Redacted]
[Redacted]

ADMINISTRATIVE ASSISTANT 1